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UNITED NATIONS
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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

TRIAL CHAMBER III

Original: English

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Mr. Adama Dieng

Date: 21 November 2001

JUDICIAL REFORMS
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THE PROSECUTOR

v.

**THÉONESTE BAGOSORA, ANATOLE NSENGIYUMVA,
GRATIEN KABILIGI and
ALOYS NTABAKUZE**

Case No. ICTR-98-41-I

**DECISION ON DEFENCE'S EXTREMELY URGENT MOTION FOR ALL
INFERENCES TO BE DRAWN FROM THE JOINDER DECISION RENDERED
ON 29 JUNE 2000**

The Office of the Prosecutor:

Mr. Chile Eboe-Osuji
Ms. Patricia Wildermuth
Ms. Amanda Reichman

Defence Counsel:

Mr. Raphaël Constant
Mr. Jacques Larochelle
Mr. Jean Yaovi Degli
Mr. Clément Monterosso
Mr. Kennedy Ogetto
Mr. Gershom Otachi Bw'Omanwa

The International Criminal Tribunal for Rwanda ("Tribunal"), sitting today as Trial Chamber III, composed of Judges Lloyd George Williams, Presiding, Yakov Ostrovsky, and Pavel Dolenc (the "Chamber");

BEING SEISED OF the Extremely Urgent Motion for All Inferences to Be Drawn From the Joinder Decision Rendered on 29 June 2000, filed jointly by all Accused on 5 September 2000 (the "Motion");

RECALLING the Decision of Trial Chamber II rendered on 29 June 2000, joining for purposes of trial the three following indictments: *Prosecutor v. Bagosora* (ICTR-96-7-I); *Prosecutor v. Nsengiyumva* (ICTR-96-12-I); and *Prosecutor v. Kabiligi and Ntabakuze* (ICTR-97-34-I) (the "Joinder Decision");

RECALLING that following the Joinder Decision the Registry assigned the joined case the following single joinder case name and number: *Prosecutor v. Bagosora, Nsengiyumva, Kabiligi and Ntabakuze* (ICTR-98-41-I) (the "Joinder Case").

CONSIDERING the oral submissions of the Prosecutor and respective Counsel to the Accused Théoneste Bagosora, joined by Counsels to the Accused Kabiligi, Nsengiyumva, and Ntabakuze;

NOW DECIDES the matter.

1. As a threshold matter, the Chamber notes, that contrary to the oral submission of the Prosecutor during the Hearing, the Motion presents, at least in part, some issues which do not call upon the Tribunal to render an impermissible declaratory ruling in the absence of concrete and justiciable facts. The facts underlying the Motion are, therefore, distinguishable from those predicated in the decisions in the case authorities the Prosecutor cited during the Hearing, i.e., *Prosecutor v. Bagosora* (ICTR-97-T) Decision on the Defence Motion for Pre-Determination of Rules of Evidence (9 July 1998); *Prosecutor v. Kabiligi and Ntabakuze* (ICTR-97-34-I) Decision on Ntabakuze's Motion for a Declaratory Ruling in Order to Determine the Law Applicable to the Prosecutor's Motion for Joinder Filed on 28 October 1999, Prior to Hearing the Said Motion (5 May 2000).

2. The Chamber is of the considered opinion that the Motion presents at least one justiciable and ripe issue, namely: whether each of the Accused may enjoy his individual right to receive notice of proceedings and to have a right to participate in proceedings involving matters coming for consideration before this Chamber in the context of the Joinder Case.

3. Rule 82 (A) of the Tribunal's Rules of Procedure and Evidence provides: "In joint trials, each [A]ccused shall be accorded the same rights as if he were being tried separately." Moreover, Article 23(3) of the Directive for the Registry, which was written before the advent of Rule 48 *bis*, provides, in relevant part: "Where two or more [A]ccused are joined in one indictment, only one case number shall be assigned and one case file maintained. . . ."

4. In light of the clear mandate of Rule 82(A), the Chamber finds that it is in the interest of justice to permit each Accused, through their respective Defence Counsel, to receive notice of all filings in the Joinder Case and to enjoy his individual rights to make oral and written submissions and right of audience at hearings.

5. The Chamber, believes, however, that the Defence prayer that all Accused be allowed "to express their point of view on all motions filed by any of the parties and to participate on the same footing at all stages of the proceedings [,]" calls upon the Chamber to issue a ruling based on hypothetical generalities rather than on specific facts. If concrete factual circumstances arise in the future calling upon the Chamber to consider this particular request, the Chamber will fashion the appropriate order at that time.

6. Accordingly the Tribunal:

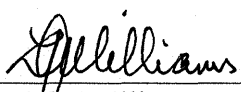
Directs the Registry, effective immediately, to file under the Joinder Case number, ICTR-98-41-I, all documents in respect to any of the four Accused, Théoneste Bagosora, Gratien Kabiligi, Anatole Nsengiyumva and Aloys Ntabakuze, whose cases have been joined for purposes of trial; and further

Directs the Registry to give notice of any filing in any of the individual cases comprising the Joinder Case to all parties, regardless of whether the document bears the individual case names or numbers or the joinder case name or number; and further

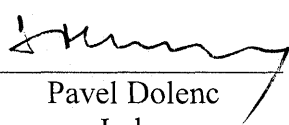
Orders that henceforth all parties to the Joinder Case shall make all filings using only the Joinder Case name and number, regardless of whether the matter involves only one or more of the four Accused whose cases are joined for trial under the Joinder Case name and number.

DENIES the Defence Motion in all other respects.

Arusha, 21 November 2001.


Lloyd G. Williams
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

Seal of the Tribunal